

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1411 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS AND L.R. OF RANABHAI SAVABHAI RABARI

Versus

GENAJI KHUMAJI MALI

Appearance:

MR MH RATHOD for Petitioners

MR VIPUL S MODI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/01/99

ORAL JUDGEMENT

This Revision Application is directed against the order dated 3.8.1998 passed by the Joint District Judge, Banaskantha, Palanpur, whereby the learned Judge set aside the order dated 21.6.1995 passed below Exh.5 in RCS No.82/92 and granted injunction in terms of para 13 (A).

2. The necessary facts are that there was a dispute

between the parties in respect of agricultural land bearing survey No.130, admeasuring about 9 acres and 25 guntas in Village Davas. According to the plaintiffs, the said field is of their ownership. It is stated that they are in possession since more than 20 years as tenant, since they were given the suit land in lieu of the land which was acquired in the year 1971. They developed the land, they also obtained electric connection and installed motor of 20 H.P. The plaintiffs sought injunction to restrain the defendants from interfering their possession in the said land. Along with the suit, an application Exh.5 was filed for interim injunction. The learned Trial Judge, by ex-parte order dated 5.7.92 directed the parties to maintain status-quo. It is alleged that after the order of status-quo was passed, on 12.11.1992, in the scuffle of taking over possession of the land in question forcibly, the original defendant No.1 late Genaji died. It is stated that the plaintiff and his two sons have been convicted on the charge of murder of original defendant No.1. A reply to the application Exh.5 was filed stating that they had purchased the land for Rs.80,000/- by oral agreement as the land was of new tenure land and hence the same could not be sold without prior permission of the District Collector. As such at the time of accepting the consideration, the plaintiff assured that after obtaining necessary permission, a sale deed would be executed in their favour. It is stated that the defendants who are Rabaris by caste, used to feed sheeps in the waste-land situated near the land of the plaintiff. They also used to work as labourers on the plaintiff's field. Thus, there was good relations between them. Considering the old relations, they relied upon the plaintiff and gave Rs.80,000/- in cash in instalments. However, in due course of time, the price of the land had gone high which changed the intention of the plaintiffs. It is also stated that they are in possession of the land in dispute.

3. On consideration of documents and affidavits.

the Joint Civil Judge (JD), Deesa, found that the amount of consideration was fully paid to the opponents in cash. The Court also found that the defendants are in possession of the land. The Court held that the sale deed was not executed as the land was of new tenure and the land could not be sold without prior permission of the Collector. The Court also found that the plaintiffs tried to take possession forcibly after obtaining the order of status-quo and in the scuffle, the original defendant No.1-Genaji died. Considering all facts and circumstances of the case, the learned Civil Judge (JD),

Deesa rejected the application Exh.5 by order dated 21.6.1995. The plaintiffs preferred appeal against the said order to the Court of District Judge, Banaskantha, Palanpur. The learned Joint District Judge, who, eventually heard the appeal, held that there is no material to show that the consideration of Rs.80,000/- was passed over to the plaintiffs. The learned Judge also found that no reliance can be placed either on the panchnama prepared by the revenue authorities or on the panchnama prepared by the police in the murder case. The learned Judge also observed that the trial court was unnecessarily influenced by the sentiments on account of the murder of the original defendant No.1. In view of the finding, the learned Judge set aside the order dated 21.6.1995 and granted interim relief in terms of para 13 (a).

4. I have heard learned counsel for the parties. Before I deal with the contentions of the respective parties, it would be apt to recapitulate the legal position that ordinarily the court of appeal will not interfere with the exercise of discretion exercised by the trial court and substitute for its discretion unless in a case where the court has acted unreasonably or capriciously or has ignored the relevant facts or in disregard to the settled position of law. A reference may be made to the decision of the apex court in the case of U.P. CO-OPERATIVE FEDERATION VS. SUNDER BROS. DELHI reported in AIR 1967 SC 249.

5. The Trial court accepted the version of the defendant that they had purchased the land before one year and had paid Rs. 80,000/- in instalments towards consideration of the said sale. It was an oral agreement. The Trial Court took into consideration the relations between the defendants and the plaintiff and the fact that defendants are illiterate persons and as such they did not insist for executing the receipt. The statement is supported by the affidavit of Kalabhai Savabhai wherein he stated that the disputed land was purchased by them through an oral agreement of Rs. 80,000/- and the amount of consideration was fully paid in instalments. This finding has been reversed by the appellate court on the ground that no receipts or written notes with respect to the payment of Rs. 80,000/- have been produced. The possibility cannot be ruled out that in peculiar facts and circumstances which existed in the present case no written receipt might have been executed. It is of course true that two views can be taken of the matter. The view taken by the trial court cannot be said to be unreasonable or capricious and as such the

appellate court was apparently in error in reversing the finding of the trial court on this count. The trial court exercised the discretion in favour of the defendants relying on the piece of evidence Mark 11/1 i.e panchnama drawn by the Court Commissioner. In the said panchnama dated 8.9.1992 the possession of the defendants is shown. However, this piece of evidence has been discarded by the learned judge on the ground that in the panchnama standing crop of the disputed land is mentioned, over and above two buffalos, goats etc. in all 9 cattles are mentioned. Further two rooms, one well is also mentioned in the disputed land. In the opinion of the learned appellate judge from the panchnama it cannot be said that the disputed land was in possession of the defendants. The learned judge also took into notice Exh. 14 wherein the plaintiff stated that on the disputed land, there exist their houses and other things belonging to them. The fact remains that the document does not show the possession of the plaintiff. The said panchnama was used by the trial court only to the extent that it does not show possession of the plaintiff. The appellate court has committed an error in reversing the finding of the trial court without any basis. The trial court while exercising the discretion took into consideration another piece of evidence i.e panchnama drawn by the revenue authorities mark 65/2 wherein it is mentioned that the possession is of the defendants. The learned appellate judge has discarded the said evidence on the ground that the plaintiffs were not parties to the said proceedings of the panchnama and the same has been drawn without their knowledge. In my view the learned judge was wrong in discarding the said evidence. Such panchnama is relevant at the stage of consideration of an application for temporary injunction. The trial court relied on the evidence of Piraji Laxmanji Mark 100/3, a statement recorded in Session Case No. 63 of 1993 saying that this land in dispute is in possession of the defendants. The said evidence has been discarded on the ground that Session Case No. 63 of 1993 is a proceeding in respect of murder because of the scuffle between the parties wherein one of the defendants had died. In my view the said piece of evidence has a relevance for consideration of the application for temporary injunction. The statement of Piraji Laxmanji was recorded by the Sessions Court. It is not in dispute that the scuffle took place on the land in dispute in which the original defendant No. 1 died. It is also not in dispute that the plaintiff and two sons have been convicted on the charge of murder. It may further be noticed that a panchnama which was prepared during police investigation was prepared and in the said case also the

possession of the defendant is shown. The learned appellate judge has discarded all these evidences on the ground that the trial court ought not to have been sentimental. The learned judge has brushed aside this important aspect of the case that after obtaining the order of status quo the plaintiff tried to take the possession which led to the scuffle in which one of the defendants died. The plaintiff along with his two sons have been tried for the said offence and they have been convicted. This important piece of evidence has been rightly used by the trial court. The learned judge was in error in reversing the said finding. Apart from this there is affidavits Exh. 15/1, 15/2, 15/3 wherein it is clearly stated that the land in dispute was in possession of the defendants. Considering all facts and circumstances of the case, the learned judge has exceeded the jurisdiction in reversing the finding of the trial court and substituting his own views, which is not permissible in law.

6. In view of the aforesaid, I allow this Revision Application. The impugned order dated 3.8.1998 passed by the Joint District Judge, Banaskantha is quashed and set aside and confirm the order dated 21.6.95 passed by the Civil Judge (J.D.) Deesa. Rule made absolute to the aforesaid extent. Interim relief is vacated including the order of expediting the hearing by the trial court i.e. to complete the same by 31.3.1999.

m.s.p.